

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**JENNIFER LIN et al.,
Plaintiffs and Respondents,**

v.

**THE CITY OF PLEASANTON,
Defendant and Respondent;**

**KAY AYALA,
Real Party in Interest and
Appellant.**

**MODIFICATION (NO CHANGE IN
JUDGMENT)**

A121147

**(Alameda County
Super. Ct. No. RG07361370)**

BY THE COURT:

It is ordered that the opinion filed herein on July 16, 2009, be modified as follows:

On page 7 of the opinion, the last sentence of the first paragraph is deleted, and the following sentence is substituted in its place: “And in *Defend Bayview, supra*, 167 Cal.App.4th at pages 849, 856-858, a referendum petition was properly rejected where it did not include the redevelopment plan that was adopted by the challenged ordinance and expressly incorporated by reference.”

On page 7 of the opinion, the third sentence of the last paragraph is deleted, and the following sentence is substituted in its place: “The Development Plan was not included in the text of that ordinance, was not attached as an exhibit, and was not expressly incorporated by reference.”

On Page 9 of the opinion, the second sentence of the last paragraph is deleted, and the following sentence is substituted in its place: “In all but the most extreme situations,

this purpose is fulfilled by construing the “text” to include the language of the ordinance itself, plus any documents attached as exhibits or expressly incorporated by reference.”

On page 10 of the opinion, the first sentence of the last paragraph is deleted, and the following sentence is substituted in its place: “We therefore conclude that barring extreme circumstances not presented by this case, section 9238, subdivision (b)(2) does not require a referendum petition to include documents that were neither attached to the challenged ordinance nor expressly incorporated by reference.”

On page 11 of the opinion, the fourth sentence of the first and only full paragraph is deleted, and the following sentence is substituted in its place: “Were we to construe the text requirement to include documents that were neither attached to nor expressly incorporated into the ordinance itself, the ministerial duty of checking the text could too easily be transformed into a discretionary act exceeding the ‘straightforward comparison of the submitted petition with the statutory requirements for petitions’ that is authorized by law.”

On page 11 of the opinion, the following text is added following the first full paragraph (which ends with a citation to *Alliance for a Better Downtown Millbrae v. Wade* (2003) 108 Cal.App.4th 123, 133):

In their petition for rehearing, the Lins argue for the first time that the Development Plan *was* incorporated by reference into Ordinance No. 1961 based on the following language in that ordinance: “NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PLEASANTON DOES HEREBY ORDAIN AS FOLLOWS: [¶] . . . [¶] SECTION 2. Approves Case PUD-33, the application of James Tong, Charter Properties, for Planned Unit Development (PUD) development plan approval . . . subject to the conditions shown on Exhibit B, attached here and incorporated herein by this reference.” This language explicitly incorporated into the ordinance Exhibit B, the Final Conditions of Approval, but did not explicitly incorporate the Development Plan itself. The Lins argue that notwithstanding an explicit incorporation of

the Development Plan, the reference to the plan made it an integral part of the ordinance.

In support of their argument, the Lins cite a number of cases for the proposition that a document or statute may incorporate another even when the exact phrase “incorporates by reference” is not used. None address the issue of incorporation by reference in a context similar to the one before us. Most involve the interpretation of an ordinance or statute that expressly refers to another statute or ordinance. (See, e.g., *Tosh v. California Coastal Com.* (1979) 99 Cal.App.3d 388, 395-396 [Monterey County ordinance requiring a permit for all types of work specified in a Uniform Building Code provision incorporated by reference that Building Code provision]; *City and County of San Francisco v. Carpenter Funds Admin. Office* (1984) 162 Cal.App.3d 896, 900 [local ordinance that imposed a payroll tax on certain employers but provided an exemption for any “organization described in Section 501(c) or 501(d) or 401(a) of Title 26 of the United States Code” incorporated those federal provisions by reference]; *Mar v. Sakti Internat. Corp.* (1992) 9 Cal.App.4th 1780, 1783-1784 [Code Civ. Proc., § 387, subd. (b), which requires a court to allow intervention “[i]f any provision of law confers an unconditional right to intervene. . .” incorporated by reference Lab. Code, § 3853, which grants employers the right to become a party to a lawsuit by an injured employee against a third party]; *In re Cox* (1970) 3 Cal.3d 205, 209 [trespassing ordinance that stated it would not apply when its application would result in an act prohibited by the Unruh Civil Rights Act “incorporate[d]” the Unruh Civil Right Act].) Others cases cited by the Lins involve the interpretation of a contract, deed, or pleading that refers to another document. (See *Shaw v. Regents of University of California* (1997) 58 Cal.App.4th 44, 54 [“Patent Agreement” signed by university professor incorporated the royalty provisions of the University Policy Regarding Patents, which was referred to in the Patent Agreement and set forth on the

back of the form]; *Mecchi v. Picchi* (1966) 245 Cal.App.2d 470, 479 [probate court should have considered affidavit by a decedent regarding the disposition of property as an “integral part of the deed” when it was referred to in that deed]; *Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 609 [judgment on the pleadings improperly granted based on plaintiff’s failure to specifically state in its complaint that it was “incorporating by reference” several documents that were attached to the complaint and were discussed and referred to therein].)

Read together, and as relevant here, these cases stand for the uncontroversial proposition that when an ordinance refers to a separate statute or document, the substance of the latter will affect the meaning of the former. This is simply a way of giving effect to the all the words within an ordinance when ascertaining its meaning. (See *Donovan v. Poway Unified School Dist.* (2008) 167 Cal.App.4th 567, 589-590 [when interpreting a statute, courts strive to give effect to every word and phrase].) Here, the issue is not the *meaning* of Ordinance No. 1961, but whether its “text” includes documents not explicitly incorporated. It is one thing to say that a statute’s reference to a different statute or document incorporates the substance of that other statute or document; it is quite different to say the “text” of a statute includes any document or other law referred to in the statute.

Were we interpreting the meaning of Ordinance No. 1961, it might well be necessary to look to the specific language of the Development Plan to which that ordinance refers. But that is not our task here. Rather, we must determine whether a document that is not attached to an ordinance and is not explicitly incorporated by reference can be said to be a part of the “text” of the ordinance that must be included in a referendum petition. For reasons we have already discussed, treating such documents as the “text” of an ordinance would place an unreasonable burden on referendum proponents in ascertaining the requisite contents of their petition.

On page 12, the first sentence of the second paragraph is deleted, and the following sentence is substituted in its place: “The referendum petition circulated by Ayala complied with the literal requirements of section 9238 and the trial court erred when it granted the writ based on its determination that the petition did not contain the full text of Ordinance No. 1961.”

This modification does not effect a change in the judgment.

The petition for rehearing is denied.